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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,527	10/12/2001	Robert B. Blake	0290.00004	2471

7590 06/24/2004
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EXAMINER

SY, MARIANO ONG

ART UNIT PAPER NUMBER

3683

DATE MAILED: 06/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/976,527

Applicant(s)

BLAKE, ROBERT B.

Examiner

Mariano Sy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9, 13, 14 and 19 is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-12, 15-18 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 05122004.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

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The Advisory Action mailed on 6/1/04 is hereby vacated. The after final amendment has been entered with the entry of the RCE on 5/12/04.

Any inquiry concerning this communication should be directed to Jack W Lavinder at telephone number 703-308-3421.



Jack W Lavinder
SPE
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DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 5, 2004 has been entered.
2. The terminal disclaimer filed on April 5, 2004 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent No. 5,934,699 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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4. Claim 18 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 09/982,619. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications claim a trailer hitch cover assembly comprising a main body or hitch insert having an aperture or opening, a movable cover plate hingedly connected or rotatable door, and the main body or insert including at least one aperture extending through the sidewalls, the '619 application does not include the limitation of the at least one aperture being a plurality of apertures.

With regards to the plurality of apertures. In *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960) the courts held that mere duplication of parts has no patentable significance unless a new and unexpected result is produced. It would have been obvious to one of ordinary skill in the art to have modified the at least one aperture of application '619 to have included a plurality of apertures in order to provide additional holes to reliably connect with the locking pin.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

5. Claims 1, 12, and 20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of Blake (U.S. Patent No. 6,176,506) in view of Ponder (U.S. Patent No. 4,730,841). Although the conflicting claims are not identical, they are not patentably distinct from each other because both application and patent claim a trailer hitch cover assembly comprising a

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hitch insert or main body having an aperture or opening, an insulating member or anti-vibration mechanism between the hitch insert or main body and hitch tube, and a cover plate but the patent does not include the limitation of a cover plate being hingedly connected.

Ponder teaches in fig. 1 and 3 the use of a hitch device cover assembly having a cover plate 14 hingely connected to a main body 10 and being movable between a closed position and an open position. It would have been obvious to one of ordinary skill in the art to have modified the hitch cover assembly of the patent to have included a hitch device cover assembly having a rotatable cover plate, as taught by Ponder, in order to provide a structure that enables the locking of the hitch device to prevent theft of a towed trailer vehicle as taught in the abstract of Ponder.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 3-5, 8, 10, 11, 15, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Morelock (U.S. Patent Number 6,019,386).

Re-claims 1 and 4 Morelock discloses, as shown in fig. 1-5, a trailer hitch cover assembly comprising: a main body 18 having an aperture adapted to fit over a trailer hitch tube 12,36 on a motor vehicle and to allow insertion of a trailer hitch into the hitch

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tube; an insulating member 34 adapted to be disposed over the hitch tube and between said main body and the hitch tube; and a rotatable cover plate 20 connected to said main body and being movable between a closed and an open position for closing and opening said aperture.

Re-claim 3 Morelock discloses, as shown in fig. 1-5, wherein said main body includes at least one aperture 60 adapted to allow passage of a lock pin 58.

Re-claim 5 Morelock discloses, as shown in fig. 1-5, wherein said main body includes at least one first hinge knuckle 22.

Re-claim 8 Morelock discloses, as shown in fig. 1-5, wherein said main body includes a plurality of apertures (hole for 14 and 58).

Re-claim 10 Morelock discloses, as shown in fig. 1-5, a trailer hitch cover assembly comprising: a main body 18 having an aperture adapted to fit over a trailer hitch tube 12,36 on a motor vehicle and to allow insertion of a trailer hitch into the hitch tube; an insulating member 34 adapted to be disposed over the hitch tube and between said main body and the hitch tube; and a rotatable cover plate 20 connected to said main body and being movable between a closed and an open position for closing and opening said aperture; wherein said insulating member further comprises a front face having an opening adapted to allow passage of the hitch into the open end of the hitch tube.

Re-claim 11 Morelock discloses, as shown in fig. 1-5, wherein said cover plate includes a plurality of raised elements 32.

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Re-claim 15 Morelock discloses, as shown in fig. 1-5, a trailer hitch cover assembly comprising: a main body 18 having a front face and an opening adapted to fit over a hitch tube and allow passage of a hitch into an open end of the hitch tube; a movable cover 20 connected to said main body to be moved between a first and a second position for closing and opening the open end of the hitch tube; and wherein said main body includes at least one first hinge knuckle 22.

Re-claim 18 Morelock discloses, as shown in fig. 1-5, a trailer hitch cover assembly comprising: a main body 18 for connection to a trailer hitch tube on a vehicle and having a front face with an opening adapted to allow passage of a trailer hitch into an open end of the hitch tube and opposed side walls extending from said front face; a movable cover plate 20 hingedly connected to said main body to be moved between a first and a second position for closing and opening the open end; wherein said main body includes a plurality of apertures (hole for 14 and 58) extending through said sidewalls.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 6, 7, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morelock '386 in view of Ponder (U.S. Patent Number 4,730,841).

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Re-claims 6, 7, 16, and 17 Morelock discloses a hinge 22 fails to disclose wherein said cover plate includes at least one second hinge knuckle and further including a hinge pin extending through said first and second hinge knuckle to allow the cover plate to rotate about said hinge pin between closed and open positions.

Ponder teaches, as shown in fig. 1, a main body 10 includes a first hinge knuckle 26, a cover plate 14 includes a second hinge knuckle 28, a hinge pin 30 extending through said first and second hinge knuckle to allow the cover plate.

It is a matter of design choice for one ordinary skill in art to have modified the hitch cover assembly of Morelock, as taught by Ponder, ythat have the same intended function of rotating the cover plate about the hinge pin between closed and open positions.

10. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morelock '386 in view of Vo et al. (U.S. Patent Number 6,053,627).

Re-claim 2 Morelock discloses, as shown in fig. 1-5, a trailer hitch cover assembly comprising: a main body 18 having a front face and an opening adapted to fit over a trailer hitch tube on a vehicle and to allow passage of a trailer hitch into an open end of the hitch tube; a cover 20 hingedly connected to said main body and being movable between closed and open positions for opening and closing the open end.

However Morelock fails to disclose wherein the main body includes at least one deflectable tab to retain said main body on the hitch tube.

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Vo et al. teaches, as shown in fig. 1 and 2, a trailer hitch includes a main body ABP' (fig. 2b) with at least one deflectable tab (G).

It would have been obvious to one of ordinary skill in the art to have modified the main body with deflectable tab into the hitch cover assembly of Morelock, in view of the teaching of Vo et al., in order the main body will positively secure on the hitch tube.

11. Claims 9, 13, 14, and 19 are allowed.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mariano Sy whose telephone number is 703-308-3427. The examiner can normally be reached on Mon.-Fri. from 9:00 A.M. to 3:00 P.M.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Lavinder, can be reached on 703-308-3421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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 M. Sy

June 15, 2004



JACK LAVINDER
SUPERVISORY PATENT EXAMINER
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